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No. 07-1207

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CLERK

IN THE

Supreme Court of the United States

JONATHAN McCRAY,

Petitioner,

v.

PEE DEE REGIONAL TRANSPORTATION AUTHORITY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION

ROBERT THOMAS KING
WILLCOX, BUYCK & WILLIAMS, P.A.
248 W. Evans Street
P.O. Box 1909 (29503-1909)
Florence, SC 29501
(843) 662-3258 - Tel.
(843) 662-1342 - Fax

Counsel for Respondents

216002

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

I. Whether Petitioner has failed to present compelling reasons for granting the Petition where he does not even attempt to argue that the Fourth Circuit's opinion affirming the district court's grant of summary judgment conflicts with a decision of this Court or another court of appeals, conflicts with a decision of a state court of last resort on an important federal question, decided an important federal question that has not been settled by this Court, or so far departs from accepted judicial proceedings or sanctions such a departure as to require an exercise of this Court's supervisory power?

II. Whether the Petitioner has failed to present compelling reasons for granting the Petition where he merely argues that the Fourth Circuit and the district court construed the facts erroneously and misapplied properly stated rules of law, neither of which occurred?

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STATEMENT OF THE CASE

The Petitioner brought this action relating to his termination as Pee Dee Regional Transportation Authority ("PDRTA") Executive Director and subsequent arrest for misappropriation of PDRTA funds. The Petitioner asserted claims under, among other provisions, 42 U.S.C. § 1981 and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

The respondent PDRTA is a regional transportation authority established under the section 58-25-10 of the South Carolina Code of Laws. Like other regional transportation authorities, the PDRTA is governed by a board of directors. Its day-to-day functions are administered by an executive staff, including an executive director who serves at the pleasure of the board of directors.

The Petitioner served as the PDRTA executive director from 1994 until June 21, 2001. The respondents Edward Robinson, George Simmons, Elaine Barkley, Andy Ingram, Bill Boyd, Theodore Burns, Larry Foster, Steven Rast, Alphonso Campbell, Harold Kornblut, and Nancy Finklea are, or were at relevant times, members of the PDRTA board of directors. Robinson[1], Simmons, Boyd, Burns, and Campbell are African-American. The defendant James B. Knight (now deceased) was the PDRTA executive director immediately following the Petitioner, but during different times relevant to the

1. For some unknown reason the Petitioner continues to describe Robinson's race as white. He is, and always has been, an African-American.

Petitioner's claims, was employed as either the PDRTA deputy director, the PDRTA director of operations, or the PDRTA interim executive director.

Beginning in 1997 certain PDRTA board members, primarily Rast followed by Robinson and then, over time, others, began to have serious concerns regarding the manner in which the Petitioner was operating the PDRTA. Rast's initial concerns involved such things as: increases in the rate of payables and receivables; increases in per-passenger subsidy and costs; purchases of equipment for amounts in excess of what had been authorized by the board of directors; and similar issues. Rast began to raise these concerns at board meetings, but was met with resistance by the Petitioner and other board members. As it turned out, Rast's initial concerns proved to be only the tip of the iceberg. In the months and years following, board members began to learn of additional facts which raised grave doubts about the manner in which the Petitioner was operating the PDRTA.

In 2000 the Federal Transit Administration ("FTA") conducted its triennial review of the PDRTA for fiscal years of 1998, 1999, and 2000. This review revealed serious questions regarding the PDRTA's use of federal funding, and led to an FTA investigation. Ultimately, the FTA found, among other things, the PDRTA was seriously deficient in the area of financial management and compliance, including such things as dramatically insufficient local share match revenue, insufficient documentation to support draw-down requests, overdraws of funds, and the like. As a result of these deficiencies, the FTA suspended disbursement of grant

money to the PDRTA. The FTA also required that all draw-down requests submitted by the PDRTA be specifically reviewed and approved. In addition, the FTA directed the PDRTA repay the United States Treasury $170,980.00 plus interest for an overdraw of funds.

As a result of the triennial review and subsequent investigations, the FTA directed the PDRTA to recalculate local match requirements for fiscal years 1998, 1999, and 2000. The FTA suspended the PDRTA's abilities to draw on federal funding and ultimately demanded that the PDRTA return $895,083.00 (plus interest) in overpayments resulting from the PDRTA's improper treatment of local share revenue and other financial errors. The FTA also discovered that the PDRTA, under the Petitioner, had attempted to utilize improper local share revenue relating to a $3,000,000.00 appropriation from Congress. As a result, the FTA ordered the PDRTA to repay an additional $600,000.00.

The PDRTA relies heavily on federal funding for its operations. Thus, the FTA's demand for repayment of well over a million dollars in federal funds and suspension of the PDRTA's ability to draw on federal funding threatened the continued viability of the PDRTA. Yet, the Petitioner offered no recovery plan, nor did he seek the board's input on the development of one – as a matter of fact, the Petitioner kept the board in the relative dark as this dire situation developed. His sole plan for resolving these issues was to seek forgiveness of the debt, which the FTA and the Department of Justice refused to do. In fact, it was only after the Petitioner was terminated that the PDRTA was able to develop a recovery plan acceptable to the FTA.

In addition to the FTA investigations, the board learned that the Petitioner had secured lines of credit, in the amounts of $1,000,000.00 and $250,000.00, and a loan, in the amount of $214,161.40, in the PDRTA's name without board approval and without the signature of the board chairman, both of which are required by PDRTA bylaws. (Under the PDRTA by-laws, the Chairman of the Board of Directors must sign "all agreements, contracts, deeds, notes, mortgages, bonds or other instruments which commit the Authority to an expenditure of funds or use of resources, except as otherwise specified by vote of a majority of the membership voting" and that "[a]ll bonds, notes, mortgages and other evidence of indebtedness of the Authority shall be signed by the Chairman except as otherwise specified by vote of a majority of the membership.") When board members repeatedly requested that the Petitioner produce minutes and/or resolutions authorizing the loans, the Petitioner was unable to produce any such records as there were none. At the time of the Petitioner's termination as executive director, the PDRTA owed several-hundred thousand dollars on those loans.

Also coming to light at this time were significant, widespread problems with other aspects of the PDRTA's financial condition, service delivery, and employee morale, all of which cast grave doubt on the Petitioner's ability to effectively lead the PDRTA. For example, certain vendors vital to the PDRTA's operations would deal with the PDRTA on a cash-only basis until the Petitioner was terminated. The State of South Carolina would not allow the PDRTA to purchase gasoline at state discounts; thus, the PDRTA had to purchase gas using

private credit cards at retail prices. Additionally, the PDRTA was delinquent in its payments on worker's compensation and other insurance premiums. And board members were receiving complaints from public officials and customers regarding service delivery problems, and from employees regarding the tyrannical manner in which the Petitioner was exercising his powers as executive director. In fact, the service delivery and customer complaints were so widespread that the PDRTA was losing service contracts with — and funding from — several governmental entities.

Despite the fact that the PDRTA was on the precipice of fiscal and operational ruin, the Petitioner consistently advised the board that the PDRTA was on sound financial footing and was operating effectively. During board meetings in the months and years leading up to the Petitioner's termination, Robinson, Rast and other board members consistently and repeatedly raised their concerns about the PDRTA's poor financial condition, the Petitioner's leadership or lack thereof, the Petitioner's repeated disobedience to and refusal to comply with board directives and requests, low employee morale, service complaints and the like, but were rebuffed by the Petitioner and a group of board members supportive of the Petitioner.

At a PDRTA board meeting on May 24, 2001, several board members' dissatisfaction with the Petitioner's performance culminated in a motion, made by Robinson (again, an African-American), requesting that the Petitioner tender his resignation effective immediately. That motion ultimately failed for want of a majority, with nine voting for the motion and nine voting against.

At the following board meeting on June 21, 2001, Robinson made a motion to terminate the Petitioner immediately. The motion passed on a nine to seven vote. Those voting in favor of termination were the defendants Robinson, Rast, Barkley, Campbell (by proxy), Burns, Ingram, Simmons, Finklea, and Kornblut. Of these nine, four are African-American: Robinson (who made the motion for termination), Burns, Simmons, and Campbell. The defendant Foster was absent from the meeting and did not submit a proxy. Among those voting against termination was the respondent Boyd, an African-American. Knight was named interim executive director.

At the time of the Petitioner's termination, the PDRTA owed over two million dollars to the federal government and private lending institutions, but had absolutely no plan for financial recovery.

After extensive discovery, the Defendants moved for summary judgment. The district court granted summary judgment finding, among other things, that the Petitioner had failed to produce sufficient admissible evidence to withstand a properly supported summary judgment motion. Following an appeal, the Fourth Circuit Court of Appeals affirmed by unpublished *per curiam* opinion. Both the district court and the Fourth Circuit determined that the Petitioner's so-called evidence, direct or indirect, of discriminatory intent was comprised, in the main, of inadmissible hearsay, unsupported allegations and contradictory statements, and that the Respondents put forth a legitimate, performance-based reason for his termination.

REASONS FOR DENYING THE PETITION

The Fourth Circuit's opinion does not conflict with a decision of this Court or another court of appeals, does not conflict with a decision of a state court of last resort on an important federal question, did not decide an important federal question that has not been settled by this Court, and did not so far depart from accepted judicial proceedings or sanction such a departure as to require this Court to exercise its supervisory power. To the contrary, the Petitioner merely argues that the Fourth Circuit and the district court construed the facts erroneously and misapplied properly stated rules of law, neither of which occurred. As such, the Petitioner has not demonstrated "compelling reasons" justifying that the petition be granted.

I. The Fourth Circuit's opinion does not conflict with the decision of this Court or any other court, address or resolve an unsettled federal question, or entail, represent or sanction a departure from the usual course of proceedings.

Pursuant to Rule 10 of the Supreme Court Rules, a writ of certiorari will issue "only for compelling reasons," which include:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the

> accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> * * *
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

Nowhere in his petition does the Petitioner point to even one decision of this Court or any other court with which the Fourth Circuit's opinion conflicts. Likewise, the Petitioner does not even attempt to argue that the Fourth Circuit's actions or opinion represents, embodies, or sanctions a departure from "the accepted and usual course of judicial proceedings" in any manner, much less in such a manner as to require this Court to exercise its supervisory powers. Finally, the Petitioner does not even suggest that the Fourth Circuit decided an important, but unsettled, federal question.

In short, the petition is utterly silent on exactly what "compelling reasons" exist for granting a writ of certiorari in this action. There are no such compelling reasons. As such, the Petitioner has failed to carry his burden, and the petition should be denied.

II. The entirety of the petition is devoted to the Petitioner's view that the Fourth Circuit made erroneous factual findings and misapplied properly stated law, neither of which occurred.

"A petition for writ of certiorari is rarely granted when the asserted error consists of factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. Here, the Petitioner's petition consists of nothing more than the implicit argument that the Fourth Circuit and the district court erred in their factual findings and misapplied well-established and correctly-stated principles of law. In fact, the petition is simply an attempt by the Petitioner to re-argue the exact arguments made to and rejected by the courts below. As such, the Petitioner has not presented any compelling reason justifying the issuance of a writ of certiorari.

Even so, the Petitioner's arguments are misplaced, as both the Fourth Circuit and the district court made the correct factual findings and correctly applied properly stated rules of law.

In order to establish a prima facie case under 42 U.S.C. § 1981, a plaintiff must prove: (1) that he is a member of a protected class; (2) that he was qualified for the position and that his performance satisfied his employer's expectations; (3) that he was dismissed; and (4) that his position was filled by a member of a non-protected class. *Gairola v. Commonwealth of Va. Dep't of Gen'l Servs.*, 753 F.2d 1281, 1286-87 (4th Cir. 1985); *Honor v. Booz-Allen & Hamilton, Inc.*, 383 F.3d 180, 188 (4th Cir. 2004). And in order to make out an equal

protection claim, "a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination." *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001); *Sylvia Dev. Corp. v. Calvert County*, 48 F.3d 810, 818-19 (4th Cir. 1995) (plaintiff must prove that the defendants intended to discriminate through the "clear and intentional" introduction of an illegal classification in their actions). The essential elements of an equal protection claim are the same as one under 42 U.S.C. § 1981. *See Gairola*, 753 F.2d at 1286.

A plaintiff's burden of establishing a prima facie racial discrimination claim can be satisfied through either direct or indirect proof of discrimination, or through the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *E.E.O.C. v. Clay Printing Co.*, 955 F.2d 936, 940 (4th Cir. 1992) (ADEA claim). Under either method, a plaintiff always retains the "ultimate burden" of proving "that the defendant intentionally discriminated against the plaintiff." *Texas Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

In support of his claim that there existed "direct" evidence of discrimination, the Petitioner relies upon several allegations and accusations, which he continually mischaracterizes as "direct quotes." Applying well-established principles of law to the record, the Fourth Circuit and the district court correctly determined that this so-called "direct evidence" consisted of, in the main, inadmissible hearsay, contradictory statements, conclusory allegations and rank speculation, which are

insufficient, as a matter of law, to withstand a properly supported motion for summary judgment. *See, e.g., Greensboro Prof'l Fire Fighters Ass'n v. City of Greensboro*, 64 F.3d 962, 967 (4th Cir. 1995) (speculation does not constitute probative evidence which can be used to withstand summary judgment); *Rohrbough v. Wyeth Laboratories, Inc.*, 916 F.2d 970, 973-76 (4th Cir. 1990) (inadmissible hearsay and contradictory statements cannot be considered); *Md. Hwys. Contractors Ass'n, Inc. v. State of Maryland*, 933 F.3d 1246, 1252-53 (4th Cir. 1991) (same); *Barwick v. Celotex Corp.*, 736 F.2d 946, 960 (4th Cir. 1984) (genuine issue of material fact cannot be created by conclusory allegations and affidavits which conflict with previous deposition testimony); *Goldberg v. B. Green and Co., Inc.*, 836 F.2d 845, 848 (4th Cir. 1988) (subjective beliefs and unsupported allegations cannot be used to oppose summary judgment successfully). The Fourth Circuit also properly concluded that much of the Petitioner' purported evidence do not bear on the employment decision at issue, and thus provides no nexus between any alleged discriminatory intent and the Petitioner's termination. *See, e.g., Fuller v. Phipps*, 67 F.3d 1137, 1142 (4th Cir. 1995) ("[w]hat is required is evidence of conduct or statements that both reflect directly the alleged discriminatory attitude and that bear directly on the contested employment decision"); *Brinkley v. Harbour Recreation Club*, 180 F.3d 598, 608 (4th Cir. 1999) (plaintiff must establish a direct nexus between the allegedly discriminatory statements and the employment action), *abrogated on other grounds by Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003).

In the instant petition, the Petitioner, however, fails to even address, must less convincingly argue, how the Fourth Circuit's conclusions are incorrect. As if saying something enough times will eventually make it so, in his brief the Petitioner simply recounts, over and again, the same "evidence" rejected previously and proclaims there to be a genuine issue of material fact.

For example, the Petitioner claims that Ray Gardner, a former PDRTA board chairman, stated that respondents Barkely (who is white), Ingram (who is white), and Simmons (who is African-American) called him and stated that the "whites" needed to stick together (indeed, a curious statement to have been made by Simmons) and terminate the Petitioner. During his deposition, Gardner was questioned about these purported conversations, and failed to disclose about any racial comments made by any of these individuals. Thus, this purported "quote" was properly rejected as not only inadmissible hearsay, but also contradictory to prior sworn deposition testimony. The Petitioner offers no reason why such a conclusion is improper.

The Petitioner also claims that respondent Boyd (an African-American) told him in 1994 that certain white employees were not to be touched and that the Petitioner couldn't undo the good things that white employees had done. This evidence, too, was rejected. Even assuming its truth, the alleged statement was made some seven years prior to termination by a board member who was a *supporter* of the Petitioner and who voted *against* the motion to terminate. Clearly it has no bearing on the employment decision, much less provides a direct nexus between the decision to terminate and any discriminatory intent.

Similarly, the Petitioner proclaimed, in two affidavits (one of which was unsigned and thus not properly considered under Rule 56 of the Federal Rules of Civil Procedure) that other board members (non-parties) told him not to bow to the supposed "racist" group seeking his termination, that a third party told him that another third party opposed him because of his race, and that a third party advised him that two board members called another board member by a racist name. The Petitioner raised all of these purported statements before the district court and the Fourth Circuit, and they were properly rejected as inadmissible hearsay. Moreover, these statements directly contradict the Petitioner's own deposition testimony: when asked repeatedly and extensively about any and all evidence of racially-charged statements, discriminatory intent or the like of which he knew, had heard or was otherwise aware, the Petitioner failed to disclosed a single incident as described.

Both the Fourth Circuit and the district court determined that the Petitioner's "direct evidence" claim boiled down to two alleged statements: (1) one by Rast that "I can't stand that black son of a b—tch," and (2) one by Barkley to another board member that "the only difference between you and that black S.O.B. is that you're white and he is black. The first chance we get we are going to run his ass out of town, no matter how good you think he is." Both courts correctly determined that the Petitioner had failed to establish that either of these statements were anything more than isolated comments, and were insufficiently contemporaneous, by time or other circumstances, to the board's decision to terminate to create a genuine issue of material fact.

Again, the Petitioner fails to point out how this conclusion is erroneous.

Given that the Petitioner failed to produce direct evidence of discrimination, the Fourth Circuit and the district court properly analyzed, and then rejected, the claims under the *McDonnell Douglas* framework. Under the *McDonnell Douglas* framework, if a plaintiff establishes a prima facie case of discrimination using circumstantial evidence, the burden of production shifts to the employer to produce evidence that "it acted with a legitimate, nondiscriminatory reason." *Williams v. Staples, Inc.*, 372 F.3d 662, 667 (4th Cir. 2004). If an employer satisfies its burden of production, the burden then returns to the plaintiff to establish that the employer's proffered reason is a mere pretext, and that race is the real reason. *Id.* at 667.

The lower courts analyzed the record, and properly concluded that the Respondents had carried their burden of producing evidence that it terminated the Petitioner for legitimate, nondiscriminatory reasons. As detailed, under the Petitioner's watch and as a result of the Petitioner's actions: the PDRTA owed over two million dollars to the federal government and various financial institutions; the PDRTA was encountering serious operating difficulties due to the failure to pay various vendors; the PDRTA was losing contracts because of service problems and customer complaints; and PDRTA employee morale was low. After conducting its triennial review of the PDRTA, the FTA had found that the PDRTA was plagued with serious financial, management, and accounting problems. As a result, the PDRTA was confronting a suspension on its ability to

draw on federal funding. Despite all of the problems identified by the FTA, the FTA's imposition of severe penalties against the PDRTA and the FTA's demands for repayment of significant sums of money, all of which threatened the continued viability of the PDRTA, the Petitioner had no plan for recovery. He did not even think it necessary to fully advise the board of the dire circumstances facing the PDRTA, much less seek the board's input on what to do next.

Additionally, the Petitioner undertook many acts which were either outside of his authority as executive director or were in excess of the authority granted by the board. For example, the Petitioner secured lines of credit and loans without board authorization and without the board chairman's signature, and the Petitioner made purchases which exceeded the financial limits set by the board. He consistently failed to keep the board advised as to the true condition of the PDRTA. Obviously, the Petitioner was apparently either unwilling or unable to recognize the legitimate limits placed on his authority to act, seemingly deemed the authority and wishes of the PDRTA board as insignificant, and repeatedly acted either with complete disregard for or in defiance of the board's instructions.

The Petitioner attempts to ignore or downplay the significance of these events in an effort to suggest that the near financial ruin of the PDRTA was a mere pretext for racial discrimination. For example, the Petitioner now claims that audits in 1999 prove that the PDRTA was financially sound, ignoring the fact that the FTA review and investigations, and much of the massive debt, came in 2000 and 2001. He also claims, rather incredibly, that

the FTA's review was racially motivated as evidenced by the fact that the match recalculation was ordered to go back to 1998 only, the year that the white finance director retired, ignoring the fact that the FTA triennial review was limited to three fiscal years immediately prior (i.e., 2000, 1999, and 1998), hence the use of the term "triennial" review.

The Petitioner also contends that he was never provided a reason for his termination and that the Petitioners were looking for legitimate reasons after-the-fact to support the termination. Such a blatant mischaracterization of the record was properly rejected by the Fourth Circuit.

First, the board minutes reveal that just prior to making the motion to terminate the Petitioner, respondent Robinson stated openly that he had grave concerns about the direction in which the PDRTA was heading and the manner in which it was being run, that the PDRTA was losing funding because of those concerns, and that the PDRTA needed to change directions for the sake of its future operations. Immediately following Robinson's statements on the record, a motion to adjourn failed and Robinson then made a motion to terminate the Plaintiff. After a discussion by the board about problems with the Plaintiff's performance, the motion to terminate passed. There was, therefore, an explanation given for the motion to terminate the Plaintiff, and thus for the termination itself.

Second, even if an explanation satisfactory to the Petitioner was not offered at the moment of his termination, Rast's, Robinson's, and other board members' expressed concerns about the dire financial condition of the PDRTA, including the FTA's investigations, determinations and penalties (financial and otherwise), the Petitioner's performance and perceived (if nothing else) mismanagement, the Petitioner's repeated defiance and violation of board directives and authorization, the unauthorized loans and lines of credit, the Petitioner's failure to comply with board members' requests and the like were known to all, including the Plaintiff, beginning as early as 1997. In fact, those concerns, particularly as repeatedly and constantly expressed by Rast and Robinson, were never hidden and, in fact, became a constant source of friction at board meetings: the Petitioner was well aware of them, even if he disagreed. Any further elaboration at the time of the Petitioner's termination would have been superfluous, and the absence of an explanation of what had been made known repeatedly for years prior is not evidence of pretext.

The Petitioner also contends that Barkley's directive, in February of 2002, for the PDRTA staff to "dig, dig, dig" into the records is evidence that the Respondents were attempting to fabricate, after-the-fact, a reason for the termination, and thus constitutes proof of pretext. As the Fourth Circuit recognized, the Petitioner takes this statement completely out of context. The directive to the PDRTA staff to dig (she denies stating "dig, dig, dig") related to finding possible criminal conduct committed by the Petitioner during his tenure at the PDRTA. The board was already aware of

the Petitioner's misuse of a PDRTA credit card, and there was concern that there was much more malfeasance of a criminal nature of which they were not aware. Barkley's statement had absolutely nothing to do with any reasons for the Petitioner's termination and is not evidence of pretext.

Finally, the Petitioner finds vindication that Congress ultimately forgave the PDRTA's debt to the FTA. With absolutely no proof whatsoever, the Petitioner claims that Congress found that the PDRTA was not at fault – Congress in fact made no such finding. As a matter of fact, forgiveness came in 2005, four years after the Petitioner had been terminated, and only after the PDRTA had developed and implemented an FTA-approved recovery plan and been repaying on the debt for those four years. The fact that forgiveness of the debt had to come in the form of a genuine, not just a proverbial, Act of Congress after the PDRTA had been laboring under and repaying the debt for four years should offer no solace to the Petitioner.

That the Petitioner may think that the FTA's investigations, the PDRTA's resulting million-plus dollar debt to the federal government, and the other problems which beset the PDRTA were of no significance or that he has provided an alternate explanations for them is irrelevant. In an incredible display of self-aggrandizement (and self-delusion), the Petitioner's proclaims his performance to have been "excellent, if not flawless." Unfortunately for him, it is his employer's perception, not his perception, which matters. *Evans v. Techs. Apps. & Serv. Co.*, 80 F.3d 954, 960-61 (4th Cir. 1996). And both the Fourth Circuit and the district court

correctly determined that the Respondents' perception that the Petitioner's performance was not acceptable or worthy of continued employment is legitimate, non-discriminatory, non-pretextual, and amply supported by the record.

The Petitioner argues nothing more than that the Fourth Circuit's factual conclusions were erroneous. The Petitioners arguments are both unsupported by the record and fail to demonstrate any compelling reasons to justify the grant of the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ROBERT THOMAS KING
WILLCOX, BUYCK & WILLIAMS, P.A.
248 W. Evans Street
P.O. Box 1909 (29503-1909)
Florence, SC 29501
(843) 662-3258 - Tel.
(843) 662-1342 - Fax

Counsel for Respondents